

CONTRACT
for
PROFESSIONAL ENGINEERING SERVICES
between
THE CITY OF WICHITA, KANSAS
and
BURNS & MCDONNELL ENGINEERING COMPANY, INC.

THIS CONTRACT, made this date, December 20, 2005, by and between THE CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BURNS & MCDONNELL ENGINEERING COMPANY, INC. party of the second part, hereinafter called the "CONTRACTOR".

WITNESSETH: That

WHEREAS the CITY wishes to remove contaminated soils from the Harcros/Tri-State Sites as described in Request for Proposal # FP500099 and Addendum thereto, the "PROJECT"; and

WHEREAS, CONTRACTOR has available and offers to provide personnel and facilities necessary to accomplish the PROJECT work within the required time as set for in its proposal in response to the Request for Proposals for the Project (submitted December 1, 2005), the PROPOSAL; and

WHEREAS, the CITY is authorized by law to employ professional services to assist with the implementation and installation of such PROJECT.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. **SCOPE OF SERVICES**

The CONTRACTOR shall furnish professional services, material, and labor as set out in its Proposal on file in the Department of Environmental Services, and the Request for Proposal # FP500099 and Addendum thereto, which documents are incorporated herein by reference, except as specifically modified by this agreement, the "Scope of Work."

II. **IN ADDITION, THE CONTRACTOR AGREES**

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in Scope of Services.
- B. To make available during regular office hours at its Wichita office all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
- C. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of CONTRACTOR, its agents, servants, employees, or subcontractors occurring in the performance of its service under this contract.
- D. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by CONTRACTOR and, where relevant to method of payment, to make such material available at its office at reasonable times during the contract period, and for three (3) years from the date of final payment under the contract for inspection by the CITY or its authorized representatives

- E. To accept compensation for the work herein described in such amounts and at such periods as hereinafter provided and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- F. To submit monthly billings to the CITY of the costs accrued in the performance of the services herein described on the basis of the expense chargeable to the PROJECT plus a proportionate part of the fixed fee based on progress to date.
- G. To complete the services to be performed by CONTRACTOR hereunder according to the Proposal, as may be adjusted for the effective date of this agreement; EXCEPT that the CONTRACTOR shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the CONTRACTOR.
- H.
 - 1. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans, and construction, or other work or material furnished by the CONTRACTOR under this agreement.
 - 2. CONTRACTOR further agrees, covenants and represents, that the work or material furnished by CONTRACTOR, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from errors, omissions or negligence.
- I. CONTRACTOR shall procure and maintain such insurance as will protect the CONTRACTOR from damages resulting from errors, omissions and negligent acts of the CONTRACTOR, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this Agreement and

for which it is legally liable. Such policy of insurance shall be in an amount not less than \$500,000.00.

In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall not be less than:

Workman's Compensation - Statutory

Employer's Liability - \$100,000.00 each occurrence

Further, a comprehensive general liability policy shall be procured and maintained by the CONTRACTOR that shall be written in a comprehensive form and shall protect CONTRACTOR against all claims arising from injuries to persons (other than CONTRACTOR'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of CONTRACTOR, its agents, officers, employees or subcontractors in the performance of CONTRACTOR services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time CONTRACTOR starts any work under this agreement. The CONTRACTOR shall furnish the CITY copies of all insurance policies or certificates of insurance that relate to the insurance that relate to the insurance policies that must be maintained hereunder. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be

given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

III. **THE CITY AGREES:**

- A. To furnish all available information and data pertaining to the PROJECT now in the CITY'S possession and CONTRACTOR may rely on such information and data as accurate without having to take steps to verify the same.
- B. To pay the CONTRACTOR for its services in accordance with the requirements of this agreement.
- C. To provide right of entry or access for CONTRACTOR'S personnel in performing the services hereunder.

IV. **PAYMENT PROVISIONS**

- A. The CITY agrees to pay the fees and reasonable and necessary expenses and disbursements actually incurred by CONTRACTOR as set forth in the Proposal and described below. In no event, however, shall the total compensation (including compensation for expenses) under this Agreement exceed the sum of **\$250,000.00**, unless specifically authorized by the CITY. Payments shall be made in accordance with CITY purchasing procedures upon presentation of statements for services rendered and as approved by the CITY. There shall be no further compensation for services rendered or for expenses incurred in addition to those specified above in the absence of prior written consent. It is understood that CONTRACTOR shall have no responsibility to perform services if the CITY does not authorize additional funds for payment of same.

B. Payment to CONTRACTOR shall be \$157,202.80, which lump sum is calculated by extending the following prices per unit for bid quantities, which are for this Project the total base items and the additional site restoration items as provided in the Proposal. In addition, if the CITY deems public meetings are necessary and requests in writing Option Task #2, payment of \$2,000 per meeting for presentation, preparation, and travel during or after the start of this project. In addition, if the CITY deems Geoprobe investigations of soils are necessary and requests in writing Option Task #3, payment of \$270 for each Geoprobe sample investigation with on-site analysis shall be made to properly characterize the level of soil contamination. Should the Project require the excavation of more than 916 cubic yards or the tonnage exceed 1113 tons as described in the Proposal, payment shall be made at a rate of \$82.80 per ton for the transportation and disposal of additional soils characterized as special waste, \$7.90 per ton for labor and overhead, and \$17.00 per ton for additional excavation backfill material and topsoil. Should the Project require the disposal of hazardous waste soils, payment shall be made at a rate of \$148 per ton for the transportation and disposal of said soil instead of \$82.80 per ton for soils characterized as special waste. In addition, if the City deems necessary the transportation and disposal of clean soil, payment shall be made at a rate of \$15.00 per ton. It is understood that the not-to-exceed sum includes contingencies beyond the base Proposal and such additional sums shall not be paid to the CONTRACTOR except as authorized in writing by the City.

C. If additional work should be necessary beyond that identified above, by virtue of a major change in the scope of the proposed PROJECT, the CONTRACTOR will

be given written notice by the CITY along with a request for an estimate of the actual costs plus a fixed fee for profit for performance of such additions; but no additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. **THE PARTIES HERE TO MUTUALLY AGREE:**

- A. This agreement incorporates by reference the General Terms and Instructions as set forth in the Request for Proposals.
- B. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the CONTRACTOR'S inability to proceed with the work, or because the services of the CONTRACTOR are unsatisfactory; PROVIDED, however, that in any case the CONTRACTOR shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the CONTRACTOR'S actual costs plus a reasonable sum for fixed fee for profit.
- C. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
- D. Neither the CITY'S review, approval or acceptance, nor payment for, any of the work or services required to be performed by the CONTRACTOR under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

- E. The rights and remedies of the CITY provided for under this Agreement are in addition to any other rights and remedies provided by law.
- F. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have executed this agreement as of the date first above written.

CITY OF WICHITA, KANSAS

By _____
Carlos Mayans, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

BURNS & MCDONNELL ENGINEERING COMPANY, INC.

By Deborah L. Ballard

ATTEST:

Kerry Schaub